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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

TERRI ALVES, Individually and On) Case No.

Behalf of All Others Similarly)

Situated,)

Plaintiff,)

vs.)

ZABROCKI REAL ESTATE)
GROUP,)

Defendant.)

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF:

1. NEGLIGENT VIOLATIONS OF
THE TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C.
§227 ET SEQ.]
2. WILLFUL VIOLATIONS OF
THE TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C.
§227 ET SEQ.]

DEMAND FOR JURY TRIAL

INTRODUCTION

1. TERRI ALVES (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of ZABROCKI REAL ESTATE

1 GROUP (“Defendant”), in negligently and knowingly contacting Plaintiff
2 on Plaintiff’s cellular telephone, in violation of the Telephone Consumer
3 Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading
4 Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as
5 to herself and her own acts and experiences, and, as to all other matters,
6 upon information and belief, including investigation conducted by her
7 attorneys.

8 **JURISDICTION AND VENUE**

- 9
- 10 2. Jurisdiction is proper under 28 U.S.C. § 1332 because Plaintiff seeks up to
11 \$1,500 in damages for each call in violation of the TCPA, which, when
12 aggregated among a proposed class number in the tens of thousands,
13 exceeds the \$5,000,000 threshold for federal court jurisdiction. Further,
14 Plaintiff alleges a national class, which will result in at least one class
15 member belonging to a different state than that of Defendant, providing
16 jurisdiction under 28 U.S.C. Section 1332. Therefore, both elements of
17 diversity jurisdiction under the Class Action Fairness Act of 2005
18 (“CAFA”) are present, and this Court has jurisdiction.
- 19 3. Venue is proper in the United States District Court for the Central District
20 of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because
21 Defendant is subject to personal jurisdiction in the County of San Luis
22 Obispo, State of California.

23 **PARTIES**

- 24 4. Plaintiff is, and at all times mentioned herein was, a citizen and resident of
25 the State of California. Plaintiff is, and at all times mentioned herein was, a
26 “person” as defined by 47 U.S.C. § 153 (10).
- 27 5. Plaintiff is informed and believes, and thereon alleges, that Defendant is,
28 and at all times mentioned herein was, a corporation whose primary

1 corporate address is in Minnesota. Defendant, is and at all times mentioned
2 herein was, a corporation and is a “person,” as defined by 47 U.S.C. § 153
3 (10). Defendant provides publication and periodical subscriptions to tens of
4 thousands of consumer nationwide. Plaintiff alleges that at all times relevant
5 herein Defendant conducted business in the State of California and in the
6 County of San Luis Obispo, and within this judicial district.

7
8 **FACTUAL ALLEGATIONS**

- 9 6. At all times relevant, Plaintiff was a citizen of the State of California.
10 Plaintiff is, and at all times mentioned herein was, a “person” as defined by
11 47 U.S.C. § 153 (10).
- 12 7. Defendant is, and at all times mentioned herein was, a corporation and a
13 “person,” as defined by 47 U.S.C. § 153 (10).
- 14 8. At all times relevant Defendant conducted business in the State of
15 California and in the County of San Luis Obispo, within this judicial
16 district.
- 17 9. Beginning around 2015, Defendant began using Plaintiff’s cellular
18 telephone for the purpose of sending Plaintiff spam advertisements and/or
19 promotional offers, via text message.
- 20 10. Plaintiff received a text message from Defendant that read:

21
22 Terri, Want more clients, more time and more money?
23 Discover \$300M Residential Real Estate System FREE:
24 <http://tiny.cc/MakeMoreWorkLess> txt STOP 2 stop.

- 25 11. Defendant sent Plaintiff spam email message advertisements and/or
26 promotional offers, including but not limited to, an email on April 10, 2015.
- 27
28

- 1 12. The text message placed to Plaintiff's cellular telephone was placed via an
2 "automatic telephone dialing system," ("ATDS") as defined by 47 U.S.C. §
3 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).
- 4 13. The telephone number that Defendant, or its agent, called was assigned to a
5 cellular telephone service for which Plaintiff incurs a charge for incoming
6 calls pursuant to 47 U.S.C. § 227 (b)(1).
- 7 14. These telephone calls constituted calls that were not for emergency
8 purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).
- 9 15. Plaintiff did not provide Defendant or its agents with prior express consent
10 to receive unsolicited text messages, pursuant to 47 U.S.C. § 227 (b)(1)(A).
- 11 16. These telephone calls by Defendant, or its agents, violated 47 U.S.C. §
12 227(b)(1).

13 **CLASS ACTION ALLEGATIONS**

- 14 17. Plaintiff brings this action on behalf of herself and on behalf of and all
15 others similarly situated ("the Class").
- 16 18. Plaintiff represents, and is a member of the Class, consisting of all persons
17 within the United States who received any unsolicited text messages and/or
18 any other unsolicited text messages from Defendant without prior express
19 consent.
- 20 19. Defendant and its employees or agents are excluded from the Class.
21 Plaintiff does not know the number of members in the Class, but believes
22 the Class members number in the tens of thousands, if not more. Thus, this
23 matter should be certified as a Class action to assist in the expeditious
24 litigation of this matter.
- 25 20. Plaintiff and members of the Class were harmed by the acts of Defendant in
26 at least the following ways: Defendant, either directly or through its agents,
27 illegally contacted Plaintiff and the Class members via their cellular
28

1 telephones by using an unsolicited text message, thereby causing Plaintiff
2 and the Class members to incur certain cellular telephone charges or
3 reduced cellular telephone time for which Plaintiff and the Class members
4 previously paid, and invading the privacy of said Plaintiff and the Class
5 members. Plaintiff and the Class members were damaged thereby.

6 21. This suit seeks only damages and injunctive relief for recovery of economic
7 injury on behalf of the Class, and it expressly is not intended to request any
8 recovery for personal injury and claims related thereto. Plaintiff reserves
9 the right to expand the Class definition to seek recovery on behalf of
10 additional persons as warranted as facts are learned in further investigation
11 and discovery.

12 22. The joinder of the Class members is impractical and the disposition of their
13 claims in the Class action will provide substantial benefits both to the
14 parties and to the court. The Class can be identified through Defendant's
15 records or Defendant's agents' records.

16 23. There is a well-defined community of interest in the questions of law and
17 fact involved affecting the parties to be represented. The questions of law
18 and fact to the Class predominate over questions which may affect
19 individual Class members, including the following:

- 20
21 a) Whether, within the four years prior to the filing of this Complaint,
22 Defendant placed any unsolicited text messages (other than a text
23 message made for emergency purposes or made with the prior
24 express consent of the called party) to a Class member using any
25 automatic telephone dialing and/or texting system to any telephone
26 number assigned to a cellular telephone service;
- 27 b) Whether Plaintiff and the Class members were damaged thereby, and
28 the extent of damages for such violation; and

1 c) Whether Defendant should be enjoined from engaging in such
2 conduct in the future.

3 28. As a person that received at least one unsolicited text message without
4 Plaintiff's prior express consent, Plaintiff is asserting claims that are typical
5 of the Class. Plaintiff will fairly and adequately represent and protect the
6 interests of the Class in that Plaintiff has no interests antagonistic to any
7 member of the Class.

8 29. Plaintiff and the members of the Class have all suffered irreparable harm as
9 a result of the Defendant's unlawful and wrongful conduct. Absent a class
10 action, the Class will continue to face the potential for irreparable harm. In
11 addition, these violations of law will be allowed to proceed without remedy
12 and Defendant will likely continue such illegal conduct. Because of the size
13 of the individual Class member's claims, few, if any, Class members could
14 afford to seek legal redress for the wrongs complained of herein.

15 30. Plaintiff has retained counsel experienced in handling class action claims
16 and claims involving violations of the Telephone Consumer Protection Act.

17 31. A class action is a superior method for the fair and efficient adjudication of
18 this controversy. Class-wide damages are essential to induce Defendant to
19 comply with federal law. The interest of Class members in individually
20 controlling the prosecution of separate claims against Defendant is small
21 because the maximum statutory damages in an individual action for
22 violation of privacy are minimal. Management of these claims is likely to
23 present significantly fewer difficulties than those presented in many class
24 claims.

25 32. Defendant has acted on grounds generally applicable to the Class, thereby
26 making appropriate final injunctive relief and corresponding declaratory
27 relief with respect to the Class as a whole.
28

**FIRST CAUSE OF ACTION
NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER
PROTECTION ACT
47 U.S.C. § 227 ET SEQ.**

33. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
34. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.
35. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
36. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE
TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227 ET SEQ.**

37. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
38. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.
39. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(C).

1 40. Plaintiff and the Class are also entitled to and seek injunctive relief
2 prohibiting such conduct in the future.

3 **PRAYER FOR RELIEF**

4 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The
5 Class members the following relief against Defendant:

6 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATIONS OF THE**
7 **TCPA, 47 U.S.C. § 227 ET SEQ.**

8 41. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1),
9 Plaintiff seeks for herself and each Class member \$500.00 in statutory
10 damages, for each and every violation, pursuant to 47 U.S.C. §
11 227(b)(3)(B).

12 42. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
13 conduct in the future.

14 43. Any other relief the Court may deem just and proper.

15 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL**
16 **VIOLATIONS OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

17 44. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
18 227(b)(1), Plaintiff seeks for herself and each Class member \$1,500.00 in
19 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
20 227(b)(3)(C).

21 45. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
22 conduct in the future.

23 46. Any other relief the Court may deem just and proper.

24 **TRIAL BY JURY**

25 47. Pursuant to the seventh amendment to the Constitution of the United States
26 of America, Plaintiffs are entitled to, and demand, a trial by jury.

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2 Respectfully submitted this 11th day of June, 2015.
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5 By: /s Todd Friedman
6 Todd M. Friedman, Esq.
7 Law Offices of Todd M. Friedman, P.C.
8 Attorney for PLAINTIFF
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